

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services)	

**PETITION FOR RECONSIDERATION OF THE
NATIONAL SHERIFFS' ASSOCIATION**

The National Sheriffs' Association (NSA), by its attorneys, hereby requests that the Commission reconsider the effective date of the *Report and Order and Further Notice of Proposed Rulemaking (Order)*¹ in the above-referenced docket as it applies to Sheriffs operating jails.² In the *Order*, the Commission required a number of changes in the rate structure and rates for interstate inmate calling services (ICS), which become effective on February 11, 2014. NSA asks the Commission to delay the effective date for Sheriffs operating jails until after a further rulemaking quantifying the administrative and security costs associated with the provision of ICS in jails or, in the alternative, no sooner than February 11, 2015.

¹ Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013) (*Order*).

² The following Sheriffs' Associations also participate in this Petition for Reconsideration: The Major County Sheriffs' Association, representing 72 Sheriffs; Buckeye State Sheriffs' Association, representing 88 Ohio Sheriffs; County Sheriffs of Colorado, Inc., representing 63 Sheriffs; Florida Sheriffs' Association, representing 67 Sheriffs; Georgia Sheriffs' Association, representing 159 Sheriffs; North Carolina Sheriffs' Association, representing 100 Sheriffs; South Carolina Sheriffs' Association, representing 46 Sheriffs; and Virginia Sheriffs' Association, representing 122 Sheriffs.

NSA represents over 3,000 Sheriffs nationwide who operate approximately 80% of the jails in the country. Sheriffs, typically, are the chief law enforcement official of their counties with numerous duties in addition to the operation of county jails. In general, a jail is used by local jurisdictions such as counties and cities to confine people for short periods of time, including people who have been convicted to serve a short sentence, individuals awaiting trial, and people who have not yet paid bail. In contrast, prisons are operated by the state or federal government and are used to house convicted criminals for periods of much longer duration.

The Sheriffs in the United States are very diverse and have different jurisdictional sizes and challenges, including budget constraints. Similarly, the size of the jails operated by Sheriffs and their inmate populations are very diverse with different challenges. A top priority for all Sheriffs operating jails is to maintain and ensure security in all aspects of the jail's operation, including the ability of inmates to make and receive calls.

Inmate telephone systems are built to reflect the unique needs of each correctional facility and provide a variety of important security components. These security components come at a cost to the facility. The small size of most jails, coupled with high turnover rates, means that jails must charge more per minute than larger facilities in order to recover the costs of providing ICS. In comments, NSA detailed some of the very real costs associated with the administration of ICS systems, including monitoring phone calls, analyzing recordings, providing escorts for phone repair technicians, and answering questions about the system from inmates and their families³ and expressed its concern about the security risks posed by adoption of a single, low ICS rate for interstate calls. NSA urged the Commission to quantify the administrative and

³ Letter from Sheriff (ret.) Aaron D. Kennard, Executive Director, NSA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 31, 2013).

security costs of ICS incurred by jails in a Further Notice of Proposed Rulemaking to be used in developing a cost recovery mechanism for jails. NSA also argued that any rate cap impacting jails should be subject to a transition period "to prevent any loss or diminution of inmate phone services."⁴

In the *Order*, the Commission adopted unrealistically low, interim rates based on average costs for interstate ICS that excluded certain costs, such as commissions. The Commission left for a further proceeding the development of permanent rate caps and consideration of whether payments to correctional facilities cover any costs of service and "whether there are certain compensable costs that payments to correctional facilities can legitimately address."⁵ The Commission established an effective date for the interim rates of February 11, 2014, even though the Commission acknowledged that the interim rates may not reimburse correctional facilities for their costs of providing ICS.

The almost immediate implementation of the interim rates established by the Commission will preclude the ability of Sheriffs operating jails to modify their budgets to account for the loss of revenues they will experience and still maintain the security and administrative functions necessary to provide interstate ICS. The harmful impact of the Commission's interim rates and rate structure is already becoming apparent to NSA's members. Many Sheriffs' offices have reported to NSA that the *Order* will reduce the revenues necessary to provide security, maintenance and other items associated with allowing inmates to use ICS. The vast majority of these offices confirm that their 2014 budgets have already been set and that they will not be able to obtain alternative sources of revenue by the *Order's* February 11, 2014,

⁴ *Id.* at 2.

⁵ *Order* at fn 203.

implementation date. Many offices report that they will be forced to reduce or eliminate interstate inmate calling services if the *Order* is not delayed until alternative sources of revenue can be obtained.

There also is the very real possibility that ICS providers may cease to provide ICS services to smaller, higher cost facilities, like jails, if the interim rate caps, which are based on average costs, remain in effect. For example, the Commission has acknowledged that Securus' cost study shows that the smaller institutions it serves are more costly to serve⁶ and Securus has stated that it will be difficult to continue providing services.⁷ Pay Tel has stated that "it will not be able to provide service to those facilities where it is unable to recover its costs."⁸ CenturyLink has stated that cross subsidized facilities will not be able to recover costs which could lead to companies terminating service⁹ and that it is "unlikely to pursue contracts with certain county facilities at least until the Commission concludes its anticipated rulemakings to clarify and finalize the ICS rate structure."¹⁰

ICS providers also may seek to cut their costs by cutting services. Pay Tel, for example, has stated that it will be forced to eliminate the provision of biometric identification services that enhance security under the interim rate caps.¹¹ The Commission anticipates this result and states that "ICS providers could renegotiate their contracts or terminate existing contracts so they can

⁶ Order Denying Stay Petitions and Petition to Hold in Abeyance, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, DA 13-2236, at para. 28 (rel. Nov. 21, 2013).

⁷ Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Nov. 25, 2013).

⁸ Petition of Pay Tel Communications, Inc. for Partial Stay of Rates for Interstate Inmate Calling Services Order, WC 12-345, at 24, (Nov. 26, 2013) (Pay Tel Stay Petition).

⁹ Petition of CenturyLink for Stay Pending Judicial Review, WC 12-345, at 13 (Nov. 27, 2013).

¹⁰ *Id.*, Declaration of Paul Cooper at para. 18.

¹¹ Pay Tel Stay Petition at 27.

be rebid based on revised terms that take into account the FCC's requirements related to inmate phone rates and services."¹²

The Commission's *Order*, therefore, will adversely impact Sheriffs, their budgets, their ability to continue to provide necessary security functions in jails, and, ultimately, their ability to continue to provide interstate inmate calling in jails. NSA seeks a delay in the effective date of the *Order* as it applies to Sheriffs operating jails in order to allow Sheriffs time to address these budgetary and operational issues.

The best way to ensure Sheriffs are able to continue to provide interstate ICS is to delay the effective date of the *Order* until the Commission quantifies the administrative and security costs of ICS in jails and develops a cost recovery mechanism specific to jails that includes these costs. In the alternative, the Commission must delay the implementation date of the *Order* to allow Sheriffs to modify their budgets for 2015 or, if they are not able to do so, to consider other alternatives that would allow them to continue to provide interstate ICS service and maintain necessary security functions.

NSA recognizes that maintenance of communication with family can have a positive influence for an inmate's re-integration into society after release from jail. However, Sheriffs must continue to have the ability to finance administrative functions and the security measures that they deem necessary to protect the public and the inmate population. The hasty implementation of the Commission's reforms will impede the ability of Sheriffs to do so and, as a result, imperil the continuation of interstate ICS in jails. This would seem to be a result that no one wants. Therefore, NSA urges the Commission to reconsider its *Order* and delay the effective date for Sheriffs operating jails until after a further rulemaking quantifying the

¹² *Order* at para. 102.

administrative and security costs associated with the provision of ICS in jails or, in the alternative, no sooner than February 11, 2015.

Respectfully submitted,

NATIONAL SHERIFFS' ASSOCIATION

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